THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.20606 AND 21532 OF 2004

COMMON ORDER:

DISPOSED OF ON 27.09.2005

BETWEEN:

S.J.ASLAM PASHA … PETITIONER

AND

GOVERNMENT OF A.P. AND OTHERS … RESPONDENTS

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.20606 AND 21532 OF 2004

COMMON ORDER:

1. Since these two writ petitions arise out of proceeding No.29694/R4-3/2004, dated 15.10.2004 issued by the Director of Mines and Geology, Hyderabad-2nd respondent, they are heard together and are being disposed of by this common order.

2. S.J.Aslam Pasha is the petitioner in W.P.No.20606 of 2004 and K.Sudha is the petitioner in W.P.No.21532 of 2004. A.Krishna is 4th respondent in both the writ petitions. S.J.Aslam Pasha submitted an application on 13.3.2003 for grant of quarry lease over an extent of 2 hectares of land in S.No.64 of Eduguvaripalle village, Amadaguru Mandal, Anantapur District. K.Sudha also made an application on 17.6.2003 for grant of quarry lease over an extent of 1 hectare in S.No.64 of Eduguvaripalle village, Amadaguru Mandal, Anantapur District. Notices were issued to S.J.Aslam Pasha to attend the survey to be conducted on 20.3.2003, 28.7.2003 and 11.11.2003, but he did not turn up for the survey. The applied area of K.Sudha was surveyed and inspected on 28.7.2003 along with the applied area of S.J.Aslam Pasha and found the applied area of S.J.Aslam Pasha is not having black granite mineral on the total applied area, but only part of area applied contains black granite. Therefore, survey and inspection was conducted once again in the presence of S.J.Aslam Pasha on 21.1.2004. In the course of inspection, it is observed that the black granite bearing area is only less than 1 hectare and the other rest of the applied area contains grey granite. The applied area of S.J.Aslam Pasha is falling perpendicular to the dyke direction, which is running north east-south west direction at an approximate height of 30 meters. No objection certificate dated 27.11.2003 issued by the MRO was received by the Assistant Director of Mines and Geology-3rd respondent on 16.4.2004. 4th respondent applied for grant of mining lease over an extent of 3 hectares covering the area applied by S.J.Aslam Pasha and K.Sudha. While recommending for rejection of the application of S.J.Aslam Pasha as the black granite available in the applied area is only 0.68 hectares and as the same does not fulfill condition under section 12(5)(2) of

A.P.Minor Mineral Concession Rules, 1966 (for short Rules), the 3rd respondent recommended for grant of mining lease over an extent of 1 hectare in favour of K.Sudha and 2.262 hectares in favour of 4th respondent. The 2rd respondent has referred the matter to the government for approval to grant quarry lease in favour of 4th respondent who is the third applicant overlooking the prior applicants i.e. A.J.Aslam Pasha and K.sudha under section 12(5)(2) of A.P.Minor Mineral Concession Rules, 1966 on the ground that the first two applicants have no experience in granite field and gave GPA to third person namely G.Ravi Babu for execution of lease deed. After obtaining necessary approval from the government, by order dated 15.10.2004 the 3rd respondent granted mining lease in favour of 4th respondent over an extent of 3 hectares in S.No.64 of Eduguvaripalle village, Amadaguru Mandal, Anantapur District. Assailing the said order dated 15.10.2004, these two writ petitions are filed by the petitioners.

3. Respondents 1 to 3 filed counter affidavit. It is stated in the counter affidavit that the particulars furnished by the petitioners in Form 'P' were taken into account while recommending rejection of the application of the petitioners and grant of lease in favour of 4th respondent. It is asserted in the counter affidavit that the lease in favour of 4th respondent has been granted in accordance with the provisions of the Rules. I deem it appropriate to refer para 7 and 8 of the counter, which read as follows:

" 7. In reply to para 7 of the petitioner's affidavit, it is respectfully submitted that the petitioner indulged in propagating false and improper issues. The petitioner has executed a notarized GPA in favour of Sri.G.Ravi babu, who is already having GPA given by Smt.K.sudha, another applicant. Further, the petitioner has submitted a notarized affidavit along with the quarry lease application in form P declarinag that he is not having any prospecting, Mining or quarry lease in his favour. As per the information furnished by the petitioner shows that he is new to the granite industry. The information furnished at column 3 (xiii) in form P also confirms the same fact. Contrary to the information submitted along with the application, now he is producing two grant orders which indicates that he has suppressed the facts for consideration. Moreover the grant orders enclosed by the petitioner for grant through proceedings No.3237/Q/2002 dated 24.7.2003 and proceedings No.4442/Q/2002 dated 24.7.2003 for a period of 20 years. These 2 grant orders were issued after the

date of submitting the application on 13.3.2003 by the petitioner. Further the petitioner did not prefer to bring the facts to the notice of the 3rd respondent at any point of time for consideration. Further, the respondent No.4 as produced the three registration certificates of the three granite industries existing in his joint family members namely i.e. (1) M/s Shri Dinesh Granites, Managing Partner Shri.a.Venkatasubbaiah, (2) M/s.Jitendra Granites Proprietor Smt.A.Dhanalakshmi W/o Shri A.Venkata Subbaiah and (3) M/s Shri Krishna Granites Proprietor Smt.A.Manjula w/o of 4th respondent and they all located in Tadipatri town in Anantapur District only with a total production capacity of 30,000 square feet per month utilizing and 100 CBM of Raw Material per month, operating six cutting and polishing machines. As such, the contention of the petitioner that the 2nd respondent wrongly recommended to the 1st respondent, the second respondent never called the particulars in spite having a recorded evidence that the petitioner is not having any leases and 4th respondent is having any granite polishing industries is totally in correct and false allegation. Hence, all the allegations are denied as false and improper.

8. In reply to para 8 of the petitioner's affidavit, it is respectfully submitted that the permission given by the 1st respondent is well within the ambit of 1st proviso under Rule 12(5) (b) of APMMC Rules, 1966 as the 4th respondent is having 3 cutting and polishing units with capacity of 30,000 square feets. Per month requiring approximately 100 cumbs of raw Granite material per month where the petitioner is not having any cutting and polishing units in the State. Further, he declared himself not having ML, QL in the States. The State Government with a view to encourage and sustain the Mineral base industry has recommended permission from the 1st respondent by the 2nd respondent giving preference to the 4th respondent under 1st proviso of Rule 12(5)(b) of APMMC Rules, 1966 on the information furnished by the applicants and necessary conclusion have been drawn as per rules. Further, the GPA executed by the petitioner is rightly available in the office records and drawn of the fact is a total suppression of facts. Hence, no violation of rules have been taken at any point of time in processing the application."

4. The counter affidavit of 4th respondent in brief is :

He applied for grant of quarry lease in respect of black granite for the purpose of using the same as raw material in the factories, which are run by his family members. Pursuant to his application, 3rd respondent conducted a survey on 7.4.2004 and demarcated the area applied by him in the said survey besides demarcating the applied areas of S.J.Aslam Pasha and K.Sudha. S.J.Aslam Pasha consented on 16.4.2004 for the survey done on 28.7.2003 and also sketch prepared on 7.4.2004. 2nd respondent granted lease in favour of 4th respondent for the area applied by him while rejecting the application of S.J.Aslam Pasha and K.Sudha in accordance with the provisions of Rules and therefore, the proceedings impugned in the writ petition are legal and proper.

5. Heard Sri.B.Adinarayana Rao, learned counsel appearing for the petitioner in W.P.No.20606 of 2004, Sri.V.L.Surendra, learned counsel appearing for the petitioner in W.P.No.21532 of 2004, learned Government Pleader for Mines and Geology appearing for respondents 1 to 3 in both the writs and Sri.T.Suryakaran Reddy, learned counsel appearing for 4th respondent in both the writs.

6. Learned counsel appearing for the petitioners submits that the applications made by the petitioners are much prior to the application of 4th respondent and therefore granting mining lease in favour of 4th respondent whose application is admittedly later to the applications of the petitioners is in violation of Sec.11 of A.P. Mines and Minerals (Development and Regulation) act, 1957 and Rule 12 A.P. Minor Mineral Concession Rules, 1966. A further submission has been made by the counsel appearing for the petitioners that 4th respondent furnished incorrect information in Form ‘P’ statutory application and thus grant of lease in his favour basing on such incorrect information cannot be sustained. Sri.B.Adinarayana Rao, learned counsel appearing for the petitioner in W.P.No.20606 of 2004 asserts that the petitioner in his writ petition has not given any GPA in favour of Ravi Babu to carryon the business. He also submits that the interpretation given by the authorities of Mines and Geology Department that the extent of mineral should be 1 hectare in the applied area is unsustainable for the reason that the requirement under the Rules states that applied area must not be less than 1 hectare. He refers to the letter No.117/Q1/2004

dated 27.9.2004 whereunder the Assistant Direct, Mines and Geology, Palamner granted a quarry lease for black granite over an extent of 0.667 hectare to one Shaik babu Fakruddin. Various other submissions have been made very extensively and they are not required to be elaborated in view of the order proposed to be passed in these writ petitions.

7. Learned counsel appearing for 4th respondent submits that the particulars given in Form 'P' statutory application should receive strict adherence and therefore respondents 1 to 3 have taken into consideration the particulars furnished by all the three applicants and gave preference to 4th respondent exercising the discretion conferred on them under the proviso to Rule 12(5)(B) of Rules and thus the proceedings issued by 2nd respondent granting lease in favour of 4th respondent over an extent of 3 hectares cannot be found fault. He also submits that since the extent of availability of black granite in the applied area of S.J.Aslam Pasha is falling less than the minimum area, the authorities of Mines and Geology Department are justified in refusing his application. He refers to Rule 7 of Granite Conservation and Development Rules, 1999 and Rule 7.11 of National Mineral Policy, 1993. Rule 7 of Granite Conservation and Development Rules, 1999 and Rule 7.11 of National Mineral Policy, 1993 read as follows:

> " 7. Minimum and maximum area for grant of a mining lease: (1) The minimum area that may be granted or renewed under a lease for ensuring mining activities to optimum depth shall not be less than one hectare;
>
> (2) The maximum area that may be granted under a mining lease shall not exceed fifty hectares.
>
> Provided that the State Government, if it is satisfied on the basis of proposed production level, geological or topographical conditions, may for the reasons to be recorded in writing, grant or renew a lease over an area more than the maximum area or less than the minimum area specified under this rule."

> " 7.1.1 The strategy for development of any mineral should naturally keep in view its ultimate end uses. The guiding principle in the strategy of development of any mineral or mineral deposit at any location shall ordinarily be the economic cost. The State may, however, undertake the development of any mineral or mineral

deposit in public interest to ensure unhindered availability of mineral raw material for the realization of national goals."

Learned counsel mainly thrusted on the edge of 4th respondent with regard to captive use of black granite. Learned Government Pleader for Mines and Geology appearing for respondents 1 to 3 in both the writs apart from placing the consent letter issued on 16.4.2004 made his submissions to sustain the order impugned in the writ and urged similar points as that of counsel for 4th respondent.

8. I shall refer to the relevant rules which prescribe the procedure for filing applications and the criteria for grant of lease. The writ petitioners and 4th respondent submitted applications in Form 'P' for grant of a quarry lease for granite useful for cutting and polishing. S.J.Aslam Pasha sought for lease over an extent of 2 hectares by his application dated 13.3.2003, K.Sudha sought for lease over an extent of 1 hectare by her application dated 17.6.2003 and 4th respondent sought for lease over an extent of 3 hectares by his application dated 12.2.2004. Rule 12 of Rules deal with the grant of lease. Sub-rules 1 to 5(c) of Rule 12 of Rules need to be noted and they are as follows:

" 12.1 A quarry lease for any minor mineral except sand and granite useful for cutting and polishing shall be granted on application subject to the provisions of sub-rules (2) and (3) and each such application for grant of quarry lease shall be accompanied by Treasury or Bank challan for rupees for rupees one thousand in token of the remittance towards fees.

5. (a)(i) A Prospecting Licence or Quarry Lease for granite useful for cutting and polishing shall be granted by the Director on an application made to the Assistant Director of Mines and Geology concerned in Form N/P and each such application for grant of P.L. or Q.L shall be accompanied by a sketch drawn to the Scale demarcating the boundaries for easy identification on the ground duly signed by the applicant and by a qualified Surveyor and by a treasury or bank challan for Rs.5,000/- towards non-refundable application fee and a deposit fo Rs.10,000/- for every hectare or part thereof in the form of cross D.D. obtained in favour of the Assistant Director Mines and Geology of the District concerned in whose jurisdiction the area falls. The application fee and deposit are subject to revision from time to time. The deposit is refundable to the unsuccessful applicants. In respect of applications in

whose favour of P.L. is granted the deposit amount shall be adjusted towards security deposit and the balance, if any, shall be refunded. In respect of applicants in whose favour the Q.L. is granted the same shall be adjusted towards advance dead rent.

i. In any government or Patta lands where the Granite is required to be removed for any purpose other than mining, the Assistant Director Mines and Geology may grant the Temporary Permit duly verifying the site and the purpose for which temporary permit is sought on payment of the required Seigniorage fee.

i. A quarry lease for granite useful for cutting and polishing shall be granted by the Director of Mines and Geology on an application made to the Assistant Director of Mines and Geology concerned in Form 'P' without obtaining any prospecting licence subject to the condition that the applicant gives an undertaking for submitting the scheme of prospecting in the first year, submission of mining plan within (2) years from the date of execution of the quarry lease deed, failing which the lease will be cancelled without giving any opportunity.

(b) The application for grant of P.L. or Q.L. for granite shall be disposed off by the Director in the order of their receipt. Whenever, more than one application is received on the same day, the Director shall grant licence or lease to the deserving applicant on merits to be recorded in writing:

Provided that the Director may grant a P.L. or Q.L. to an applicant whose application is received later, in preference to earlier application with the prior approval of the government for any special reasons to be recorded in writing:

Provided further that where a P.L. has been granted in respect of any land, the Licence shall have a preferential right for obtaining a quarry lease in respect of the land over any other person in case he has undertaken prospecting operations to establish mineral resources and submitted a prospecting report in such land and such right can be exercised only once over the entire prospected area.

(c) On receipt of an application for the grant of a Q.L. the Director shall take decision to grant precise area for the said purpose and communicate such decision to the applicant along with a copy of the surveyed sketch showing the area on which the mining plan has to be prepared. On receipt of the communication from the Director of the precise area to be granted, the applicant shall prepare and submit a mining plan within six months or such other period as may be allowed by the Director. The applicant shall then submit the mining plan duly approved by the Director or by any officer duly authorized in this behalf……"

Admittedly, 1st respondent got the prior approval of the Government in overlooking

the order of preference of receipt of applications for grant of quarry lease for granite useful for cutting and polishing. Reasons for giving preference to 4th respondent have been detailed in counter affidavit. The relevant portion of the counter affidavit reads as follows:

S.No.	Item	S.J.Aslam Pasha	Smt.K.Sudha	A.Krishna
1	Demarcation of the Area in the field	Wrongly demarcated the area and hence not satisfying under Rule 12(5)(f)(II)	Part of the dyke only applies	Total portion of the dyke has been applied.
2	Existing units	Nil	Nil	As per the ADM&G report, the applicant is having 3 granite polishing units with 6 cutting machines
3	Experience	As per the applicatin and affidavit new to the granite industry	Nil	3 years experience in granite quarrying field and 12 years in the granite trading field
4	Financial capacity	1 Lakh	Nil	5,75,000 per annum.

It is the contention of the writ petitioners that the factual information furnished by 4th respondent in statutory application regarding his owning three granite polishing units with six cutting machines is incorrect. This requires to be examined by the Government whether the particulars furnished by 4th respondent in the statutory application which is prescribed in Form 'P' are incorrect. The Government is always at liberty to cancel the proceedings issued by the 2nd in case approval has been accorded on the basis of incorrect particulars. Under Rule 35 an appeal lies to the Government against an order of the Director of Mines and Geology within a period of two months from the date of communication of such order. A provision is also made for the aggrieved party to file a revision under Rule 35A.

9. B.Adinarayana Rao, learned counsel appearing for the petitioner in W.P.No.20606 of 2004 submits that since the impugned proceedings have been issued after approval of the Government, there would be no useful purpose in

petitioners pursuing the remedy available under Rules 35 and 35A of the Rules. I am unable to accede to the submission of the learned counsel. The Government has taken into consideration the special reasons offered by the 2nd respondent while according the approval. When the petitioners dispute the correctness of the particulars furnished by 4th respondent in Form 'P' and also special reasons offered by 2nd respondent in giving preference to 4th respondent, they are at liberty to bring to the notice of appellate authority/revisional authority and seek for cancellation of the impugned order. Since the approval has been granted by the Government basing on the particulars placed before it by 2nd respondent, I hope and trust the government will not stick to the order of approval when true facts are brought to its notice by the aggrieved party either by way of an appeal or revision.

10. In that view of the matter, I deem it appropriate to dispose of these writ petitions giving liberty to the petitioners to exhaust the statutory remedy of appeal or revision available under the Rules within thirty days from today and in the event of the petitioners filing the appeal/revision before the Government, the same shall be disposed of as expeditiously as possible preferably within a period of two months thereafter. Interim order dated 9.11.2004 passed in WPMP.No.27002 of 2004 shall continue till the petitioner in W.P.No.20606 of 2004 files an appeal/revision or 30 days from today whichever is earlier. No costs.

Dated: 27-09-2005. (B.Seshasayana Reddy,J)

Cc in two days

TNB

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.20606 AND 21532 OF 2004

Dated: 27-09-2005.